



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

APR 23 2015

CERTIFIED MAIL NO. 7009 2820 0001 8697 3747
RETURN RECEIPT REQUESTED

IN REPLY: ENF-2-1
REFER TO: Docket No. R9-15-07

Kevin Igli
Senior Vice President and Chief EHS Officer
Tyson Foods, Inc.
2210 West Oaklawn Drive
Springdale, Arkansas 72762-6999

Re: Tyson Foods, Inc. and Southwest Products, LLC Finding and Notice of Violation

Dear Mr. Igli:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to Tyson Foods, Inc. ("Tyson") and its subsidiary Southwest Products, LLC ("Southwest") for violations of the Clean Air Act ("Act"), specifically the California Air Resources Board's ("CARB") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation"). The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

You should be aware that sections 113(a)(1), 113(a)(3) and 113(b) of the Act authorize EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in Tyson and Southwest being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford Tyson and Southwest an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Roshni Brahmabhatt of the Air Section, Enforcement Division at (415) 972-3995, or have your attorney contact David Kim of the Office of Regional Counsel at (415) 972-3882.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy H. Johnson for KD".

Kathleen H. Johnson
Director, Enforcement Division

Enclosure

cc w/enc: California Air Resources Board

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of)	
)	Docket No. R9-15-07
Tyson Foods, Inc.;)	
)	
Southwest Products, LLC)	FINDING AND NOTICE
)	OF VIOLATION
Proceeding Under Section 113(a),)	
<u>Clean Air Act, as Amended</u>)	

This Finding and Notice of Violation (“NOV”) is issued pursuant to section 113(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (“CAA” or the “Act”). This NOV is issued to Tyson Foods, Inc. (“Tyson”) and its subsidiary Southwest Products, LLC (“Southwest”) for violations of the Act. Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency (“EPA”) to notify any person in violation of a state implementation plan (“SIP”) of the violations. The authority to issue NOV’s has been delegated to the Regional Administrator of EPA, Region 9, and redelegated to the Director of the Enforcement Division for EPA, Region 9.

STATUTORY AND REGULATORY AUTHORITY

A. Clean Air Act

1. Pursuant to section 107(d) of the Act, 42 U.S.C. 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.
2. There are seven AQCRs designated as nonattainment for fine particulate matter (i.e., PM_{2.5}) in California, including all of the San Joaquin Valley and the Los Angeles-South Coast Air Basin. *See* 40 C.F.R. § 81.305.
3. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).

4. A person's failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).
- B. Title 13, Section 2025 of California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles
5. On December 14, 2011, California Air Resources Board ("ARB") adopted "Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants From In-Use Heavy-Duty Diesel-Fueled Vehicles," codified at title 13, section 2025 of the California Code of Regulations (the "Truck and Bus Regulation").
6. The Truck and Bus Regulation was incorporated into the federal SIP, effective May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012).
7. Under section 2025(d)(18) of the Truck and Bus Regulation, "Diesel Particulate Matter (PM)" means "the particles found in the exhaust of diesel fueled compression ignition engines. . . ."
8. Under section 2025(d)(28) of the Truck and Bus Regulation, "Fleet" means "one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation."
9. Under section 2025(d)(29) of the Truck and Bus Regulation, "Fleet Owner" means, with certain exceptions, "either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle."
10. Under section 2025(d)(42) of the Truck and Bus Regulation, "Motor Carrier" is the same as defined in California Vehicle code section 408 for fleets other than those that are comprised entirely of school buses.
11. Under section 2025(d)(47) of the Truck and Bus Regulation, "Person" means "an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity."
12. The Truck and Bus Regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately owned school buses, that have a manufacturer's gross vehicle weight rating ("GVWR") greater than 14,000 pounds. The Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for oxides of nitrogen ("NOx") and particulate matter ("PM").

13. Section 2025(x)(1) of the Truck and Bus Regulation provides that “[t]he vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation.”
14. Section 2025(x)(2) of the Truck and Bus Regulation provides that “[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of Section 2025(s)(4).”
15. Section 2025(x)(3) of the Truck and Bus Regulation provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”
16. Section 2025(s)(4) of the Truck and Bus Regulation provides that motor carriers or brokers must maintain bills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched.

FINDINGS OF FACT

17. Tyson is a corporation that owns and operates diesel-fueled vehicles registered to be driven on public highways in all 50 states, including California. Tyson operates food processing facilities in the cities of San Lorenzo, Vernon, and Rancho Cucamonga, California. Tyson also hires diesel-fueled vehicles to transport its products on California public highways.
18. Tyson has a Motor Carrier Property Permit (#0083536) issued by the State of California. The permit verifies that Tyson has met all of the statutory requirements to commercially operate motor vehicles on California's highways.
19. Southwest is a wholly-owned subsidiary corporation (doing business as Circle Foods) of Tyson that was acquired on June 1, 2013. Southwest produces specialty food products at its San Diego, California location. Southwest hires diesel-fueled vehicles to transport its products on California public highways.
20. On June 16, 2014, EPA, Region IX, issued an information request (the “Information Request”) to Tyson pursuant to section 114 of the Act, 42 U.S.C. § 7414. The primary purpose of the Information Request was to determine Tyson’s compliance with the Truck and Bus Regulation. The Information Request asked Tyson to provide information regarding diesel-fueled vehicles owned, hired, or leased by Tyson that have been operated in California since January 1, 2012.
21. On August 12, 2014, Tyson submitted its response (the “Response”) to the Information Request to EPA, Region IX.

22. The Response indicates that Tyson hired at least 96 motor carriers between January 1, 2012 and June 16, 2014 that operated on California highways, but failed to verify the compliance of these companies with the Truck and Bus Regulation.
23. The Response indicates that Southwest hired at least eight motor carriers between January 1, 2012 and June 16, 2014 that operated on California highways, but failed to verify the compliance of these companies with the Truck and Bus Regulation.

FINDINGS OF VIOLATION

24. Tyson is a "Motor Carrier" as that term is defined under section 2025(d)(42) that hires vehicles subject to the Truck and Bus Regulation. Tyson is thus subject to the requirements of 2025(x) of the Truck and Bus Regulation.
25. Tyson violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify the each of the 96 motor carriers it hired between January 1, 2012 and June 16, 2014 were in compliance with the Truck and Bus Regulation.
26. Tyson violated section 2025(x)(1) of the Truck and Bus Regulation by failing to comply with all applicable requirements and compliance schedules set forth in the Truck and Bus Regulation.
27. Southwest is a "Person" as that term is defined under section 2025(d)(47) of the Truck and Bus Regulation.
28. Southwest headquartered in San Diego, California is a California resident for purposes of section 2025(x) of the Truck and Bus Regulation. Southwest is thus subject to the requirements of section 2025(x) of the Truck and Bus Regulation.
29. Southwest violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify the each of the eight motor carriers it hired between January 1, 2012 and June 16, 2014 were in compliance with the Truck and Bus Regulation.
30. Southwest violated section 2025(x)(1) of the Truck and Bus Regulation by failing to comply with all applicable requirements and compliance schedules set forth in the Truck and Bus Regulation.

NOTICE OF VIOLATION

Notice is given to Tyson and Southwest that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that Tyson and Southwest violated section 110 of the Act and section 2025(x) of the Truck and Bus Regulation in the California State Implementation Plan, as set forth in the Finding and Notice of Violation.

ENFORCEMENT

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

42 U.S.C. § 7413(a)(1); 40 C.F.R. Part 19.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than 30 days after the date of issuance of this NOV, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any creditable evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

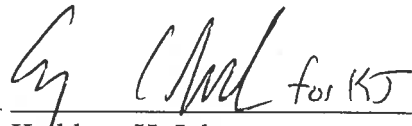
Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

Tyson and Southwest may, upon request, confer with EPA. The conference will enable Tyson and Southwest to present evidence bearing on the finding of violation, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Tyson and Southwest has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3882

DATED: 4/23/15


Kathleen H. Johnson
Director, Enforcement Division